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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,605	07/24/2003	Alberto Peisach	60783.000005	7920

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HUNTON & WILLIAMS LLP  
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WASHINGTON, DC 20006-1109

EXAMINER
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BUTLER, PATRICK

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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07/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Interview Summary</b>	Application No.	Applicant(s)	
	10/625,605	PEISACH ET AL.	
	Examiner	Art Unit	
	Patrick Butler	1732	

All participants (applicant, applicant's representative, PTO personnel):

- (1) Patrick Butler. (3) Nancy Flint.  
 (2) Christina Johnson. (4) \_\_\_\_\_.

Date of Interview: 11 July 2007.

Type: a) ☒ Telephonic b) ☐ Video Conference  
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
 If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: Proposed 15 and 18 (See Attached).

Identification of prior art discussed: Jonas et al (5,234,126), McHenry et al (4,667,454), and Agrawal et al (5,234,126).

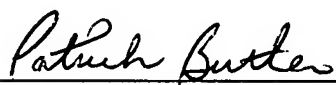
Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
 Examiner's signature, if required

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Ms. Flint discussed that "arcuately" is supported as claimed contiguous to a concentric ring as shown in Applicant's drawings. Examiner Butler agreed that "arcuately" appears to be supported by Applicant's drawings as claimed sufficiently to overcome the 35 USC 112, 1st paragraph rejection. Examiner Butler said that the proposed amendment to Claims 15 and 18 appear to overcome the 35 USC 112 2nd paragraph rejection. Ms. Flint discussed the application of Jonas et al (5,234,126), McHenry et al (4,667,454), and Agrawal et al (5,234,126) in view of the proposed amendment to Claim 15 to eliminate the "substantially" limitation to the planar concentric ring. Examiner Butler's cursory review of the applied references indicated that the limitation did not appear to be met as previously applied. However, Fig. 1C of McHenry may meet the new limitation. Ms. Flint discussed the differences between Agrawal's product's performance and the performance of the product made by Applicant's claimed process. Examiner Butler relied upon Agrawal to meet the claimed process's product's performance characteristics principally because of their identical method of manufacturing. Examiner Butler and SPE Johnson agreed to consider Ms. Flint's arguments upon their submission in Applicant's next response.

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

PROPOSED**HUNTON &  
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**TO**           **NAME:**                           Examiner Patrick Butler  
              **FIRM:**                        U.S. Patent & Trademark Office  
              **FAX NO.:**                   571 273 8517  
              **PHONE NO.:**               571 272 8517

**PAGES (INCLUDING COVER):**   48

**ORIGINAL TO FOLLOW IN MAIL:**   ☐ Yes ☒ No

**FROM**       **NAME:**                           Nancy J. Flint  
              **DIRECT DIAL:**               305-810-2522

**MESSAGE**   Examiner Butler, attached please find proposed claim amendments and arguments in response to the rejections in the April 17 Final Rejection for discussion in the interview set for tomorrow at 1:00 pm. Thank you.

**IF PROBLEM WITH TRANSMISSION, PLEASE CONTACT OPERATOR AT 305 • 536 • 2700 .**

**OPERATOR**

**DATE:**                           July 10, 2007  
              **TIME:**  
              **CLIENT/MATTER NAME:**           60783  
              **CLIENT/MATTER NO.:**           000005

This communication is confidential and is intended to be privileged pursuant to the attorney-client privilege and the work-product doctrine. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service.

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### Proposed Claim Amendments for Claims 15 and 18:

Claim 15. A method for forming a plastic container for packaging a hot-filled food product, comprising:

selecting at least one polymer for a plastic container;

heating the polymer; and

forming the container from the heated polymer;

wherein the plastic container comprises:

a mouth; and

a body cavity formed from a bottom surface and a container wall between the mouth and the bottom surface,

wherein the bottom surface of the container is formed to consist of an arcuately curved surface contiguous to a concentric ring, wherein both sides of the entire curved surface are concave ~~is convex~~ to the body cavity when viewed from the outside of the container and the concentric ring is proximate to both the curved surface and the container wall, wherein further the concentric ring is ~~substantially~~ planar between the curved surface and the container wall,

wherein further the ~~convex~~ curved surface is formed such that it flexes inward toward the body cavity of the container upon filling and sealing the container with a hot-filled food product at temperatures of about 160°F to about 200°F and the subsequent formation of a pressure differential between the interior of the sealed container and atmospheric pressure of about 2.5 psi to about 10 psi, and maintains that configuration following cooling of the hot food product, and

wherein further the container wall is formed such that it withstands buckling upon filling and sealing the container with hot-filled food product at temperatures of about 160°F to about 200°F and the subsequent formation of a pressure differential between the interior of the sealed container and atmospheric pressure of about 2.5 psi to about 10 psi, and maintains that configuration following cooling of the hot food product.

Claim 18. A method of manufacturing a plastic container with a selectively deformable surface, comprising:

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selecting at least one polymer;

heating the at least one polymer to its VICAT temperature; and

thermoforming a container from the heated polymer;

wherein the plastic container comprises:

a mouth; and

a body cavity formed from a bottom surface and a container wall between the mouth and the bottom surface,

wherein the bottom surface of the container is formed during thermoforming to consist of an arcuately curved surface contiguous to a concentric ring, wherein both sides of the entire curved surface ~~are concave~~ ~~is convex~~ to the body cavity when viewed from the outside of the container and the concentric ring is proximate to both the curved surface and the container wall, wherein further the concentric ring is ~~substantially~~ planar between the curved surface and the container wall,

wherein further the ~~convex~~ curved surface is formed during thermoforming such that it flexes inward toward the body cavity of the container upon filling and sealing the container with a hot-filled food product at temperatures of about 160°F to about 200°F and the subsequent formation of a pressure differential between the interior of the sealed container and atmospheric pressure of about 2.5 psi to about 10 psi, and maintains that configuration following cooling of the hot food product, and

wherein further the container wall is formed during thermoforming such that it withstands buckling upon filling and sealing the container with hot-filled food product at temperatures of about 160°F to about 200°F and the subsequent formation of a pressure differential between the interior of the sealed container and atmospheric pressure of about 2.5 psi to about 10 psi, and maintains that configuration following cooling of the hot food product.

#### RESPONSES TO REJECTIONS:

1. **Rejection:** 35 USC § 112, first paragraph for allegedly failing to comply with the written description requirement. See page 2.

Claims 15, 17-19 and 21-31 are rejected because the curve's shape "arcuately curved" is allegedly not described in the specification.

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**Response:** Applicants respectfully submit that the claim term "arcuately curved" in connection with the bottom surface of the container of claims 15 and 18 are supported in the specification as originally filed. Applicants bring the Examiner's attention to Fig. 2A and the specification beginning at p. 17, line 10. Element 15a references the bottom surface of the container prior to hot filling, and element 15b references the bottom surface of the container after hot-filling and cooling of the food product. Element 15a clearly shows an arcuately (definition: curved) shaped bottom of the container. Element 19 is disclosed p. 18, lines 5-11 as the uncollapsed portion of the bottom surface which provides a surface when the container is standing upright. Applicants believe this is sufficient to overcome this rejection.

The written description requirement can be met by "words, structures, figures, diagrams and formulas that fully set forth the claimed invention." *See* MPEP § 2163(I), *citing Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). An embodiment of the cup in Fig. 2A has been reduced to practice. Applicants can produce an affidavit if that would overcome this rejection.

2. **Rejection:** 35 USC § 112, second paragraph for allegedly failing to particularly point out and distinctly claim the subject matter with applicant regards as his invention. *See* page 2.

Claims 15, 17-19 and 21-31 are rejected because it is unclear what the limitation "convex to the body cavity when viewed from the outside of the container" means.

**Response:** The Examiner proposes the claim language "both sides of the curved surface of the bottom surface are concave to the body cavity." Applicants have amended claims 15 and 18 as proposed by the Examiner and request that this rejection be withdrawn.

3. **Rejection:** 35 USC § 102(b) as allegedly anticipated by USPN 5,234,126 to Jonas et. al. ("Jonas"). *See* page 4.

Claims 15 and 17 are rejected as allegedly anticipated by Jonas. The Examiner states that Jonas teaches a method for forming a plastic container for hot-filled food product comprising *inter alia* a bottom surface formed to consist of an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity and the concentric ring is proximate to both the curved surface and the container wall at col. 5, lines 19-27 and Fig. 3 [outwardly deflected portion of bottom surface], wherein further the concentric ring is substantially planar between the curved surface and the container wall [see Fig. 3 concentric ring, which is the ring that extends from the wall to the concave surface].

**Response:** Col. 5, lines 19-27 does not disclose the limitations of claim 15. There is no disclosure here of a bottom surface consisting of an arcuately curved surface contiguous to a concentric ring.

Fig. 3 likewise does not disclose the limitations of claim 15. The bottom surface of the container shown in Fig. 3 does not "consist of" an arcuately curved surface contiguous to a concentric ring, where both sides of the curved surface of the bottom surface are concave to the body cavity and the concentric ring is proximate to both the curved surface and the container wall. The



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Examiner notes that he considers the "concentric ring" to be shown in Jonas as the "ring that extends from the wall to the concave surface." This ring, however, is *not* substantially planar and proximate to the curved surface. Rather, the ring referenced by the Examiner includes a substantially planar portion *and then a curved portion curving inward to the curved surface*. Additionally, Applicants have amended claim 15 to read a "planar ring" which is not disclosed in Jonas as seen in Figs. 3 or 5. Since the claim language of this claim is "closed," Fig. 3 of Jonas does not disclose this limitation and therefore does not anticipate claim 15.

4. **Rejection:** 35 USC § 103(a) over Jonas. See page 6.

Claim 18 is rejected as allegedly unpatentable over Jonas. The Examiner states that Jonas teaches a method for forming a plastic container with a selectively deformable surface where the plastic container comprises *inter alia* a bottom surface formed to consist of an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity and the concentric ring is proximate to both the curved surface and the container wall at col. 5, lines 19-27 and Fig. 3 [outwardly deflected portion of bottom surface], wherein further the concentric ring is substantially planar between the curved surface and the container wall [see Fig. 3 concentric ring, which is the ring that extends from the wall to the concave surface].

**Response:** For the same reasons stated above in response to the rejection under sec. 102, Applicants respectfully submit that Jonas does not form a *prima facie* case of obviousness because it does not disclose each and every limitation of claim 18.

5. **Rejection:** 35 USC § 103(a) over USPN 4,667,454 to McHenry et. al. ("McHenry"). See page 8.

Claim 18 is rejected as allegedly unpatentable over McHenry. The Examiner states that McHenry teaches a method for forming a plastic container with a selectively deformable surface where the plastic container comprises *inter alia* a bottom surface formed to consist of an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity and the concentric ring is proximate to both the curved surface and the container wall [Fig. 1A, approximately at Ref. No. 7]; wherein further the concentric ring is substantially planar between the curved surface and the container wall [Fig. 1A, approximately at Ref. No. 9b extending from the sidewall 3 to the curved area 7].

**Response:** Fig. 1A is described at col. 5, lines 3-7 as "a plastic container 1 having sidewalls 3 and a bottom wall 5 which includes a substantially flat portion 7 and outer and inner convex annular rings 9 and 9a with an interstitial ring 9b." Applicants respectfully submit that Fig. 1A does *not* disclose a bottom surface of a container "consisting of" an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity and the concentric ring is proximate to both the curved surface and the container wall. The Examiner points to Ref. No. 7 in reference to the arcuately curved surface contiguous to the concentric ring, and to Ref. No. 9b in reference to a concentric ring that is substantially planar between the curved surface and the container wall. However, the

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specification makes clear first that Ref. No. 7 is "substantially flat". Also, looking at Ref. Nos. 9, 9a and 9b, these do not form a substantially planar concentric ring. Additionally, Applicants have amended claim 18 to read a "planar ring" which is not disclosed in McHenry as seen in Fig. 1A. Since the language of the claim is closed, the various hills and valleys of Ref. Nos. 9, 9a and 9b do not meet this limitation.

6. **Rejection:** 35 USC § 103(a) over USPN 5,234,126 to Agrawal et. al. ("Agrawal"). See page 10.

Claim 18 is rejected as allegedly unpatentable over Agrawal. The Examiner states that Agrawal teaches a method for forming a plastic container with a selectively deformable surface where the plastic container comprises *inter alia* a bottom surface formed to consist of an arcuately curved surface contiguous to a concentric ring, both sides of the curved surface of the bottom surface are concave to the body cavity and the concentric ring is proximate to both the curved surface and the container wall [abstract; see Fig. 3, Ref. 64 [outwardly flexed]]; wherein further the concentric ring is substantially planar between the curved surface and the container wall [See Fig. 3 between Ref. No. 64 and the side wall].

**Response:** Fig. 3 is described at col. 11, lines 1-3 as having a plurality of stress points 68 which can be seen in Fig. 3 to be concave with respect to the body cavity, *not* substantially planar between the curved surface 64 and the container sidewall. Additionally, Applicants have amended claim 18 to read a "flat ring" which is not disclosed in Agrawal as seen in Figs. 3 or 5. Since the language of the claim is closed, the various hills and valleys of stress points 68 do not meet this limitation.

Additionally, the Examiner agrees that Agrawal does not maintain inward flex during cooling of a hot-filled food product. (see page 17, point 14). The Examiner states that the features relied upon by Applicants (flexing or maintaining inward during expansion) are not recited in the rejected claims. Applicants disagree. Claim 18 has been rejected over Agrawal. Claim recites the following: "wherein further the convex curved surface is formed during thermoforming such that it *flexes inward toward the body cavity of the container upon filling and sealing* the container with a hot-filled food product at temperatures of about 160°F to about 200°F and the subsequent formation of a pressure differential between the interior of the sealed container and atmospheric pressure of about 2.5 psi to about 10 psi, *and maintains that configuration following cooling of the hot food product . . .*" (emphasis added). Accordingly, Applicants submit that the rejections over Agrawal should be withdrawn.

7. **Response to Arguments.** See page 16.

1. Resolved by claim amendment.
2. The bottom surface of Jonas has a curved surface, a substantially planar ring as referenced by the Examiner, but also includes *a curved portion curving inward from the ring to the curved surface*. Additionally, Applicants have amended claim 15 to read a "planar ring" which is not disclosed in Jonas as seen in Figs. 3 or 5 since Jonas *also*

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includes the curved portion curving inward from the ring to the curved surface. Since the claim language is closed, Jonas does not disclose the limitations of claim 15.

3. See 2.
4. Applicants have overcome the references already despite this argument.
5. The bottom surface of McHenry includes Ref. No. 7 which is described in the specification as "substantially flat". Also, looking at Ref. Nos. 9, 9a and 9b, these elements do not form a substantially planar concentric ring. Additionally, Applicants have amended claim 18 to read a "planar ring" rather than a "substantially planar ring" which is not disclosed in McHenry as seen in Fig. 1A. Since the language of the claim is closed, the various hills and valleys of Ref. Nos. 9, 9a and 9b do not meet this limitation.
6. See 5.
7. The bottom surface of Agrawal includes a plurality of stress points 68 which can be seen in Fig. 3 to be concave with respect to the body cavity, *not* substantially planar between the curved surface 64 and the container sidewall. Additionally, Applicants have amended claim 18 to read a "planar ring" which is not disclosed in Agrawal as seen in Figs. 3 or 5. Since the claim language is closed, the bottom surface of Agrawal does not meet the claim limitations. Also, Applicants have already discussed how Agrawal should be removed as a reference.
8. The bottom surface spanning D2 from Ref. No. 64 to the sidewall includes a plurality of stress points 68 which can be seen in Fig. 3 to be concave with respect to the body cavity, *not* substantially planar between the curved surface 64 and the container sidewall. Additionally, Applicants have amended claim 18 to read a "planar ring" which is not disclosed in Agrawal as seen in Figs. 3 or 5. Since the claim language is closed, the bottom surface of Agrawal does not meet the claim limitations. Also, Applicants have already discussed how Agrawal should be removed as a reference.
9. Applicants have overcome the references already despite this argument.
10. The Examiner states that the ring in Jonas extends from the corner 20 of the arcuately shaped central portion concave to the cavity to the container wall, and that the flat portion of the ring is a "substantial portion of the ring." Additionally, Applicants have amended claim 15 to read a "planar ring" which is not disclosed in Jonas as seen in Figs. 3 or 5.
11. Same as 6.
12. Same as 7.
13. Same as 8.
14. The references have already been distinguished, regardless of this argument. The Examiner admits that Agrawal admittedly does not disclose flexing or maintaining

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inward of the bottom surface during expansion, but that the features relied upon are not recited in the rejected claims. Applicants disagree. Claim 18 recited the following: "wherein further the convex curved surface is formed during thermoforming such that it *flexes inward toward the body cavity of the container upon filling and sealing* the container with a hot-filled food product at temperatures of about 160°F to about 200°F and the subsequent formation of a pressure differential between the interior of the sealed container and atmospheric pressure of about 2.5 psi to about 10 psi, *and maintains that configuration following cooling of the hot food product . . .*" (emphasis added). Clearly, claim 18 recites these features as limitations. Accordingly, Applicants submit that the rejections over Agrawal should be withdrawn.